

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EVANSTON INSURANCE COMPANY,

Plaintiff,

vs.

No. CIV 18-0654 JB\KK

DESERT STATE LIFE MANAGEMENT;
CHRISTOPHER MOYA, in his capacity as
Receiver for the receivership estate of DESERT
STATE LIFE MANAGEMENT; PAUL A.
DONISTHORPE; L. HELEN BENNETT;
LIANE KERR; AYUDANDO GUARDIANS,
INC., a New Mexico Nonprofit Corporation, on
behalf of seven protected persons; JOSEPH
PEREZ; CHRISTINE GALLEGOS,
individually and as Guardian of VICTOR
BALDIZAN, an incapacitated adult; SCOTT K.
ATKINSON, as Guardian Ad Litem for
VINCENT ESQUIBEL, JR., an Incapacitated
Person; and CHARLES REYNOLDS, as
Conservator for J.W., an Incapacitated Person,
and CAMERON GRAHAM, as trustee for
ANDREW GRAHAM; ASCENDING HOPE, LLC;
CNRAG, INC. and DECADES, LLC,

Defendants.

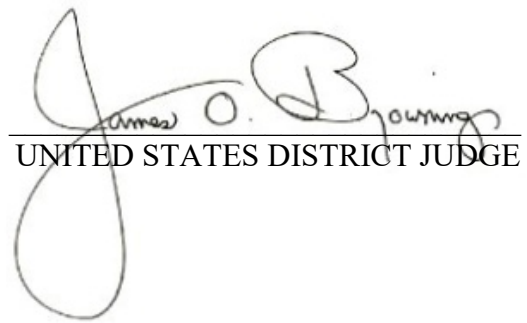
FINAL JUDGMENT

THIS MATTER comes before the Court on: (i) the Plaintiff's Third Amended Complaint for Rescission and Declaratory Judgment, filed February 15, 2019 (Doc. 44)("Third Amended Complaint"); (ii) the Court's Memorandum Opinion and Order, filed January 16, 2020 (Doc. 174)("Evanston MSJ MOO"); (iii) the Court's Order, filed March 23, 2021 (Doc. 180)("Defendants' MSJ Order"); (iv) the Court's Memorandum Opinion, Findings of Fact, Conclusions of Law, filed September 6, 2020 (Doc. 181)("Trial MOO"); and (v) the Court's Agreed Order, filed October 28, 2021 (Doc. 211)("Agreed Order"). In Plaintiff Evanston

Insurance Company's Third Amended Complaint, Defendant Ayudando Guardians, Inc., is dropped as a party. See Third Amended Complaint at 1. In the Evanston MSJ MOO, the Court held that Evanston Insurance may not rescind its Professional Liability Insurance Policy # EO865156 ("Insurance Policy") for innocent insureds, see Evanston MSJ MOO at 105, and that Evanston Insurance is not entitled to rescission of its Insurance Policy, see Evanston MSJ MOO at 111. In the Defendants' MSJ Order, the Court dismisses Evanston Insurance's claim that Defendant Desert State Life Management's insurance claim does not arise from any wrongful acts within the scope of coverage, see Defendants' MSJ Order at 4; declares that Evanston Insurance is barred from rescinding its contract because of delay in rescinding, see Defendants' MSJ Order at 4-5; and declares that rescission is inappropriate for innocent insureds, see Defendants' MSJ Order at 7. In the Trial MOO, the Court concludes that Defendant Christopher Moya and Helen Bennett are covered under Evanston Insurance's Insurance Policy, but that Defendant Paul Donisthorpe is not. See Trial MOO at 2, 89. In the Agreed Order, the Court declares that Defendant Liane Kerr is not an insured under the Insurance Policy, and therefore is not entitled to coverage or defense under the Insurance Policy. See Agreed Order at 1-2; Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment ¶¶ 60-71, at 12-15, filed September 29, 2021 (Doc. 200)("Fourth Amended Complaint"). Of the two remaining counts in the Fourth Amended Complaint, the Order dismisses Count One, Rescission. See Order at 4-5; Fourth Amended Complaint ¶¶ 46-55, at 10-11. With respect to Count Two, Declaration of No Duty to Defend Or Indemnify Asserted Claims, the Trial MOO holds that the Insurance Policy "does not provide coverage for Donisthorpe," but otherwise dismisses Count Two. Trial MOO at 89. See Fourth Amended Complaint ¶¶ 56-59, at 11-12. Given that there are no more parties, claims, or issues before the Court, the Court enters Final Judgment disposing of this case pursuant to rule

58(a) of the Federal Rules of Civil Procedure.

IT IS ORDERED that: (i) judgment is granted for Plaintiff Evanston Insurance Company on Count Three of the Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment, filed September 29, 2021 (Doc. 200), and on Count Two to the extent that the Court holds that the Insurance Policy does not provide coverage for Donisthorpe; (ii) all other counts in the Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment, filed September 29, 2021 (Doc. 200), are dismissed; (iii) this case is dismissed; and (iv) Final Judgment is entered.



UNITED STATES DISTRICT JUDGE

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-- and --

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